Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
Of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	

REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

CTIA's March 24, 1998 "Request for Deferral and Clarification" of the new CPNI rules asked that the Commission (1) defer for 180 days the effective date for applying new Sections 64.2005(b)(1) and (b)(3) to the CMRS industry; and (2) clarify the definition of CPNI and the scope of the customer win-back rule. The comments overwhelmingly support CTIA's Request and provide further reasons for granting temporary relief. No commenter opposed deferral and clarification of these rules for wireless services.

This consensus supplies a clear record for granting CTIA's request. The rules are currently scheduled to take effect on May 26, less than two weeks away. Uncertainty over the new rules is interfering with CMRS providers' pro-competitive

marketing efforts. Where, as here, the public interest benefits of relief are so compelling, and no party has submitted evidence to the contrary, a grant of immediate relief is called for. CTIA urges the Commission to do just that.

The Record Shows That the New Rules Will Harm CMRS Carriers, Consumers and Competition

CTIA's Request has generated a record that provides the factual predicate for the requested relief. The comments endorse and amplify CTIA's showing that new Sections 64.2005(b)(1), which restricts bundling of services and equipment, and 64.2005(b)(3), which prohibits efforts to "win back" customers, will severely disrupt these longstanding pro-competitive and pro-consumer wireless marketing practices. The comments demonstrate why bundling of CMRS-related equipment and information services is inextricably tied to the provision of the underlying wireless service. Thus, 360 Degree Communications states, "The new rules will require 360 to immediately cease planned marketing efforts on 90% of the new service packages rolled out this year in its Mid-Atlantic and Southeast service regions."[1] The comments also show why CMRS

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[1] Comments of 360 Degree Communications Company at 4. See also Comments of AirTouch Communications at 2-5; Comments of Bell Atlantic Mobile, Inc. at 5-6.

bundling benefits subscribers by enabling them to learn about new offerings, and to make informed decisions as to what CMRS services and equipment will best meet their mobile communication needs. Wireless carriers' own market experiences also confirm that the restriction on customer win-backs is seriously anti-competitive and will impair customers' ability to learn about lower-priced offerings.[2] No commenter offers contrary evidence.

The New Rules Will Particularly Harm New Entrants and Smaller CMRS Providers

Several commenters point out that restricting CMRS bundling and win-back efforts will have a severe impact on new CMRS entrants and smaller CMRS providers - precisely the entities that the Commission has sought to encourage through its CMRS policies and rules. These smaller carriers explain that they have limited resources to expend in developing their subscriber base and are thus particularly dependent on targeted marketing efforts, the very efforts the new rules restrict.[3] The decision

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[2] Comments of Bell Atlantic Mobile at 6-7; Comments of Vanguard Cellular Systems, Inc. at 5-7.

[3] Comments of Rural Cellular Association at 3; Comments of Vanguard Cellular Systems, Inc. at 6. Many other new CMRS entrants point out the harm the new rules will cause to CMRS competition and the lack of any countervailing benefits to subscribers. Comments of Primeco Personal Communications, L.P., Comments of Sprint Spectrum.

adopting the rules did not consider whether there would be a disproportionate impact on smaller CMRS providers that would undercut other Commission goals.[4] This problem provides another basis for relief.

The New Rules Undermine CMRS Customers' Interests

Commenters confirm that the new rules will interfere with CMRS customer expectations rather than protect them, and thus fail to achieve the goals of Section 222. They explain that there is a unique relationship between CMRS customers and carriers that is built on the close integration of wireless equipment and services, and that this relationship is impaired, not protected, by the new rules.[5] For both technological and historic reasons, customers expect their CMRS carrier to advise them about new CMRS equipment and services. These offerings are technically and physically integrated with and inseparable from

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[4] Comments of Omnipoint Communications, Inc. at 2-3 ("At a time when the Commission is engaged in a full biennial review of its rules for the purpose of reducing regulatory burdens, it is troubling that the costs of compliance with the Second Report and Order may result in severe economic harm, especially for emergent CMRS carriers such as Omnipoint."

[5] See, e.g., Comments of Vanguard at 1, 5-7 (discussing ways in which new rules ignore "the unique service relationship that CMRS providers have with their customers"); Comments of Sprint Spectrum L.P. at 4 ("CPNI restrictions based on a landline model are ill-suited to the CMRS marketplace.").

the underlying mobile service. CMRS carriers have also never been restricted in making such offerings. There is thus no privacy expectation that is served by the new rules. The Commission had an inadequate record at best on the particular CMRS customer-carrier relationship and how that relationship should affect application of the CPNI rules to CMRS. Deferral will allow a full record to be developed on this issue, while avoiding the harm from immediately enforcing these rules.

Section 222 Does Not Compel the New Rules

CTIA argued that Section 222 does not require application of Sections 64.2005(b)(1) and (b)(3) to CMRS. Section 222(c)(1)(B) does not restrict the use of CPNI to offer services "necessary to or used in, the provision of" a telecommunications service. Commenters agree that the language and purpose of this provision, to bring the use of CPNI in line with customer privacy expectations, will not be impaired either by including CMRS-related equipment and information services or by permitting win-back efforts. They show why CMRS handsets are, both legally and physically, part of the wireless "service." And they show why the Commission's inclusion of inside wiring and directories as "services" encompassed in Section 222(c)(1)(B) cannot be squared with the exclusion of CMRS-related equipment and information services, which are even more closely related in

both functional and technological terms with the underlying telecommunications service.[6] Again, no commenter presents any contrary facts or legal analysis.

MCI's Concerns Address Landline Issues Only

In short, the record of comments responding to CTIA's Request presents wide support for the relief CTIA seeks. The only discordant voice appears to be MCI, which declares in the summary to its Comments that "the Commission should deny the GTE and other CTIA requests that go beyond the CMRS context."[7] CTIA, however, did not seek deferral of Sections 64.2005(b)(1) and (b)(3) beyond their application to CMRS. To the contrary, CTIA's Request was grounded on the unique considerations and problems the new rules raise in the CMRS market. CTIA's Request provided detailed facts about the impact of the new rules on CMRS providers and customers, and showed why the goals of Section 222 would be disserved, not advanced, by applying the rules to CMRS. For example, the fact that a wireless customer cannot receive CMRS service without having a compatible handset that is licensed to the wireless carrier, makes it essential for

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[6] Comments of AT&T at 5 ("the mobile handset is itself part of the Title III radio service licensed by the FCC."); Comments of AirTouch at 2-4.

[7] Comments of MCI Telecommunications Corporation at ii.

carriers to be able to offer CMRS equipment and services together, yet the rules appear to restrict this longstanding and pro-consumer practice. This significant problem is unique to wireless services.

GTE, in its own petition seeking a stay or temporary forbearance, and several commenters supporting GTE's petition, seek broader relief that would apply to all carriers. It is this relief that MCI expressly opposes. Regardless of whether the Commission should grant such broader relief, the case for relief for CMRS has clearly been made, and MCI does not dispute it.[8]

MCI supports CTIA's request for clarification of the definition of CPNI.[9] It also does not object to deferral of Sections 64.2005(b)(1) and (b)(3) for wireless services,

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[8] Six months ago the Commission faced a similar situation: multiple requests to delay rules implementing the "rate integration" provision of the 1996 Act. The Commission held that, given the unique and potentially harmful impact of the rules on CMRS providers, it would stay application of those rules to CMRS carrier affiliates and to certain CMRS pricing plans. It denied, however, a broader stay request. Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Order, FCC 97-357, Oct. 3, 1997.

[9] "MCI agrees with CTIA that a carrier's customer names and addresses do not constitute CPNI." MCI Comments at 5. All other parties commenting on the definitional issue also support CTIA's position.

preferring to "reserve the right to comment on these issues ... at the reconsideration phase." Id. at 15. Rather, MCI devotes virtually all of its comments to attacking the separate GTE petition insofar as it applies to landline services. MCI opposes GTE's broader requests that, pending reconsideration, all carriers be allowed to use CPNI to market CPE for ADSL and other advanced services, market additional service categories to customers subscribing to a service package, and engage in win-back efforts.

MCI's objections are based on claims as to the status of CLEC-ILEC competition, fears of "the ILECs' exploitation of their monopoly status," and concerns that incumbent LECs will "misuse" their role as "underlying local network facilities providers" to impede competition. Id. at 6-15. None of these concerns are relevant to the entirely different and competitive CMRS market, where no CMRS provider is dominant and new entrants are successfully attracting customers from other CMRS providers. MCI does not question CTIA's showing as to the need for immediate relief for CMRS, and does not refute CTIA's evidence of the harm the new rules will have on CMRS competition and consumers. Nothing in its comments should give the Commission any pause in granting CTIA's Request.

Urgent Action is Essential

Where the record on a request for temporary relief reveals such a strong consensus in support, where there is no evidence of harm to the public interest which would result, and where there is a clear need for more thorough consideration of the issues raised, changing the effective date is not only appropriate - it is essential. Commenters agree that there is no reason why the rules must take effect on May 26, given that Section 222 does not require any rules at all, and that the Commission has discretion under Section 1.103 and its general authority to set compliance deadlines to change the effective date of new rules.[10] Since they were adopted, the CPNI rules have created havoc and disruption in the wireless industry as carriers struggle to apply legal concepts foreign to CMRS, and face having to modify or suspend hundreds of pro-competitive marketing programs.

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[10] Comments of AirTouch at 6-7; Bell Atlantic Mobile at 2-5.

To forestall further uncertainty, CTIA urges the Commission to act on its Request as far in advance of May 26 as possible.

Respectfully submitted,

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